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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,804	04/21/2006	Donna Hui-Ing Hwang	GULDE-69	9868
23599 7590 12/12/2007 MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			EXAMINER LAMM, MARINA	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 12/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,804

Applicant(s)

HWANG ET AL.

Examiner

Marina Lamm

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/21/06; 4/20/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-12 are pending in this application filed 4/21/06, which is a 371 of PCT/EP04/12089 filed 10/21/04, which claims priority to German application 103 50 322.6 filed 10/23/03.

Claim Objections

1. Claim 1 is objected to because of the following informalities: please delete the word "**topic**" before "water-repellent cross-linked polyester".
2. Claim 12 is objected to because of the following informalities: it appears that the phrase "contains **eventually** no emulsifying agent" should read "contains **essentially** no emulsifying agent". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lennon et al. (US 2003/0165451), supplied by the Applicant, in view of Rabe et al. (US 6,019,962).

Lennon et al. teach cosmetic compositions for treating and protecting skin, nails, hair and/or mucous membranes against environmental conditions (e.g. cold, wind, heat, sunlight) and make-up compositions such as foundation, said compositions containing

0.1-50% by weight of a diblock, triblock or multiblock semicrystalline polymer soluble in the oily phase; 10-95% of a cosmetic oil (e.g. hydrocarbons, synthetic esters and ethers, fatty acids, fatty alcohols, etc.); 5-90% of water and 0.1-30% of other solvents; 0.1-20% of an organic powder such as microspheres formed from a terpolymer of vinylidene chloride, acrylonitrile and methacrylate having a particle size of 12-40 microns, or starch powders; and 0.01-50% of cosmetic additives, including thickeners. See pp. 2-9 and Composition Examples 5-8. The compositions of Lennon et al. contain as low as 0.1% of an emulsifier, which meets the limitation "eventually (sic, should read "essentially") no emulsifying agent" in Claim 12. Lennon et al. does not teach the claimed water-repellent cross-linked polyester having a molecular weight of 600-8000 and consisting of polyvalent alcohols and dicarbonic acids. However, Rabe et al. teach the claimed cross-linked polyesters (e.g. glycerine/diethylene glycol/adipate cross-polymers) useful in cosmetic compositions for improving transfer-resistance and long wearing properties of the compositions. See Abstract; col. 2, lines 45-55; col. 4, lines 55-60. Rabe et al. exemplify a composition containing 5% by weight of glycerine/diethylene glycol/adipate cross-polymer. See col. 10, Example 3. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Lennon et al. such that to use cross-linked polyesters of Rabe et al. for their art-recognized purpose. One having ordinary skill in the art would have been motivated to do this to obtain improved transfer-resistance and long wear as suggested by Rabe et al.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lennon et al. (US 2003/0165451) in view of Rabe et al. (US 6,019,962) and further in view of Suzuki et al. (US 5,219,560).

Lennon et al. in view of Rabe et al. applied as above. Neither reference teaches the cross-linked silicone polymers of the instant claim. However, Suzuki et al. teach using such polymers in cosmetic compositions for providing water-repellency, water-resistance, oil-resistance and good retention of the makeup. See Abstract; col. 8-10, Examples. Therefore, it would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to further modify the compositions of Lennon et al. in view of Rabe et al. such that to use cross-linked silicone polymers of Suzuki et al. for their art-recognized purpose. One having ordinary skill in the art would have been motivated to do this to obtain improved water-repellency, water-resistance, oil-resistance and retention of the makeup as suggested by Suzuki et al.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

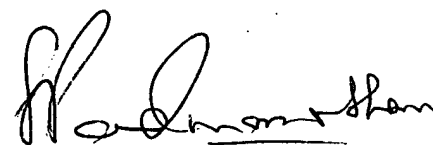
6. No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm, M.S., J.D.
Patent Examiner
12/7/07



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER